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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/542,045	07/13/2005	Hendrik Wermter	PP/15-22821/A/CGM 520/PCT	8680
324	7590	01/28/2009	EXAMINER	
JoAnn Villamizar Ciba Corporation/Patent Department 540 White Plains Road P.O. Box 2005 Tarrytown, NY 10591			WYROZEBSKI LEE, KATARZYNA I	
		ART UNIT		PAPER NUMBER
		1796		
		MAIL DATE	DELIVERY MODE	
		01/28/2009	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Attachment to the Advisory

The applicants in their response to final office action dated 11/19/2008 the applicants have filed 132 affidavit to overcome rejections of record.

First, the affidavit was not signed, therefore it will not be entered.

Second, MPEP states as follows:

716.01 [R-3] Generally Applicable Criteria

The following criteria are applicable to all evidence traversing rejections submitted by applicants, including affidavits or declarations submitted under 37 CFR 1.132:

(A) *Timeliness*. Evidence traversing rejections must be timely or seasonably filed to be entered and entitled to consideration. *In re Rothermel*, 276 F.2d 393, 125 USPQ 328 (CCPA 1960). Affidavits and declarations submitted under 37 CFR 1.132 and other evidence traversing rejections are considered timely if submitted:

- (1) prior to a final rejection,
- (2) before appeal in an application not having a final rejection, *
- (3) after final rejection **>, but before or on the same date of filing an appeal, upon a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented in compliance with 37 CFR 1.116(e); or
- (4) after the prosecution is closed (e.g., after a final rejection, after appeal, or after allowance) if applicant files the affidavit or other evidence with a request for continued examination (RCE) under 37 CFR 1.114 in a utility or plant application filed on or after June 8, 1995; or a continued prosecution application (CPA) under 37 CFR 1.53(d) in a design application.

The application at hand was issued a final office action and the applicants have not provided any evidence why such affidavit was not provided earlier, considering that the prior art of record was applied in the first office action on the merits. This violates items (2) and (3) of the above citation.

Another way the affidavit can be considered in according item (4) if the above citation, which is by filing an RCE, since the prosecution of the application is deemed to be closed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Katarzyna Wyrozebski whose telephone number is (571) 272-1127. The examiner can normally be reached on Mon-Thurs 8:30 AM-2:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wu can be reached on (571) 272-1114. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Katarzyna Wyrozebski/
Primary Examiner, Art Unit 1796
January 22, 2009